

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Ohio Adm. Code )  
Chapter 4901:1-2 Concerning Rules Involving the )  
Underground Technical Committee and the )      Case No. 15-282-AU-ORD  
Protection of Underground Facilities )

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**APPLICATION FOR REHEARING  
OF  
THE AMERICAN PETROLEUM INSTITUTE OHIO**

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Pursuant to Ohio Revised Code Section (“R.C.”) 4903.10, the American Petroleum Institute (“API”) Ohio respectfully submits the Application for Rehearing of the July 29, 2015 Finding and Order (“Order”) of the Public Utilities Commission of Ohio (“Commission” or “PUCO”) adopting new rules in conformance with R.C. Chapter 4913.

As discussed in greater detail in the attached Memorandum in Support, API Ohio respectfully requests that the Commission grant this Application for Rehearing and modify its July 29, 2015 Order in accordance with this Application for Rehearing.

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

R.C. 4913.03(A) requires each utility, excavator, developer, and designer who participates in the one-call notification system to register with the PUCO. Proposed Ohio Administrative Code (“O.A.C.”) Rule 4901:1-2-09(A), as adopted in the Commission’s Order,

establishes that each of these participants shall receive notice from the Commission to pay a safety registration fee to fund the operations of the Underground Technical Committee (“UTC”) and the Commission in the performance of its duties under R.C. Chapter 4913.

In its Initial Comments, API Ohio requested clarification on whether an entity must proactively register with the Commission or whether the entity should wait to receive notice from the Commission to pay the registration fee, as the proposed rule appears to indicate, and whether payment of the fee serves as registration itself.<sup>1</sup> In its Order, the Commission indicated that the Commission’s approach will instead be to obtain the necessary contact information from the Ohio Utilities Protection Service (“OUPS”) and only send an invoice to the affected entities rather than requiring a stand-alone registration process with the Commission.

The Commission’s Order unlawfully and unreasonably relies on only OUPS for obtaining necessary information about the entities required to register and pay a safety fee under R.C. 4913.03 and proposed O.A.C. Rule 4901:1-2-09(A), respectively. The Commission should modify its Order to indicate that necessary information will also be obtained from the Ohio Oil and Gas Producers Underground Protection Service (“OGPUPS”).

## **II. ARGUMENT**

R.C. 4913.03(A) states:

Each utility, excavator, developer, and designer who participates in the one-call notification system ***shall register with the public utilities commission and pay a safety registration*** not to exceed fifty dollars annually, which the commission may lower if the commission determines lowering the registration to be necessary. ***The commission shall administer and oversee the registration process.*** Failure to register shall result in a fine of not more than two thousand five hundred dollars.

(Emphasis added).

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<sup>1</sup> API Ohio Initial Comments at 8.

The Commission proposed O.A.C. 4901:1-2-09(A) to administer the safety registration fee. Specifically, it states:

Each utility, excavator, developer, and designer who participates in the one-call notification system in the current or previous calendar year shall receive notice from the commission to pay a safety registration fee not to exceed fifty dollars annually, which the commission may lower if the commission determines lowering the registration to be necessary.

In its initial comments, API Ohio stated that clarification is warranted on whether an entity must proactively register with the Commission or whether the entity should wait to receive notice from the Commission to pay the registration fee, as the proposed rule appears to indicate, and whether payment of the fee serves as registration itself.<sup>2</sup>

In its Order, the Commission stated that the affected entities would not need to proactively register: “[t]he affected entities already have an obligation to either register with OUPS or to provide notification and contact information to OUPS prior to excavation.”<sup>3</sup> Thus, “in order to minimize paperwork and to lessen any confusion over participation with multiple organizations,” the Commission determined that the “better approach” will be to “obtain the necessary contact information *from OUPS*” and only send an invoice to the affected entities rather than requiring a stand-alone registration process with the Commission.<sup>4</sup> (Emphasis added). As a result, the Commission concluded, no additional clarification of the proposed rule was necessary.<sup>5</sup>

API Ohio agrees with the Commission that obtaining contact information from the established protection services promotes administrative efficiency. However, obtaining this

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<sup>2</sup> *Id.*

<sup>3</sup> Order at ¶21.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

information only from OUPS could create significant, and unlawful and unreasonable, gaps in the collection of the safety registration fee. Ohio currently has two statutorily recognized protection services: OUPS and OGPUPS.<sup>6</sup> If the Commission is going to rely on the protection services to obtain necessary information, then it must obtain it from both of Ohio's protection services.

Every underground facility owner must participate in a protection service in Ohio.<sup>7</sup> Underground facility owners have the opportunity to choose between two separate and distinct protection services: OUPS and OGPUPS. Each offers differing rates and services, based on the particular needs of the facility. Some of the entities identified in proposed O.A.C. Rule 4901:1-2-09(A) may belong to OGPUPS and not OUPS.

The Commission's Order is unlawful and unreasonable because only those affected entities that belong to OUPS will be sent an invoice to pay the safety registration fee, instead of all affected entities, as required under R.C. 4913.03(A). Along with being unlawful and unreasonable, this result will be unfair to the entities registered with OUPS and not OGPUPS. Notably, OGPUPS has repeatedly stressed the importance of *all* commercial participants in Ohio's Call-Before-You-Dig Program sharing in its costs.<sup>8</sup> It will also be unfair to the entities registered with OGPUPS and not OUPS because they would be faced with significant uncertainty with regard on how to comply with R.C. 4913.03(A). Additionally, sending invoices to entities registered with OUPS and not OGPUPS may result in the underfunding of the operations of the UTC and the Commission in the performance of its duties under R.C. Chapter 4913.

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<sup>6</sup> See, R.C. 3781.25.

<sup>7</sup> See, R.C. 3781.26.

<sup>8</sup> See, Initial Comments of OGPUPS, Case No. 05-1306-AU-COI ("Additionally, OGPUPS believes that *all* commercial participants in Ohio's Call-Before-You-Dig Program should be required to share in its costs . . .").

### III. CONCLUSION

WHEREFORE, API Ohio respectfully urges the Commission to grant its application for rehearing.

Respectfully submitted on behalf of,  
THE AMERICAN PETROLEUM INSTITUTE OHIO



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Application for Rehearing was served upon the following parties via electronic mail this 28<sup>th</sup> day of August 2015.



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Summary: Application for Rehearing of The American Petroleum Institute Ohio electronically filed by Teresa Orahood on behalf of Dylan Borchers